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COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Monday, 22 February 1993, at 3 p.m.

Chairman: Mr. FLINTERMAN (Netherlands)

later: Mr. ENNACEUR (Tunisia)

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Statement by the Minister of Women's Affairs and Social Welfare of New Zealand

Question of the human rights of all persons subjected to any form of detention or imprisonment, in particular:

(a) Torture and other cruel, inhuman or degrading treatment or punishment;

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(b) Status of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(c) Question of enforced or involuntary disappearances;

(d) Question of a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (continued)

The meeting was called to order at 3.25 p.m.

STATEMENT BY THE MINISTER OF WOMEN'S AFFAIRS AND SOCIAL WELFARE OF NEW ZEALAND

1. The CHAIRMAN invited the Minister of Women's Affairs and Social Welfare of New Zealand to address the Commission.

2. Ms. SHIPLEY (New Zealand) said that despite rapid political changes over the past three or four years, the world had failed to stop systematic torture, rape and murder in many parts of the globe and the Commission could not allow the debate concerning the adequacy of the human rights infrastructure to take precedence over the compelling need for more effective promotion, protection and implementation of the standards already adopted. Despite the impressive legal infrastructure established by the international community, more effective implementation efforts were needed.

3. The first line of responsibility rested, of course, with States but, when States fell short of accepted standards in the treatment of their peoples, the international community had a responsibility to react and her Government welcomed the increasing activity of the Commission in that regard.

4. Adequate resources, efficiently used, were vital to the effective functioning of the human rights machinery, and the difficulties faced by the Centre for Human Rights in servicing the needs of the thematic mechanisms were most alarming. The forthcoming World Conference on Human Rights would provide an opportunity to recommend measures to ensure that adequate resources were available to the Centre and to the United Nations human rights programme as a whole.

5. Her Government, which was deeply committed to the proposition that human rights standards applied universally and equally to all people regardless of race, nationality, religion, social position or gender, considered that equality of race was an issue of particular concern in New Zealand and thus recognized the fundamental importance of the Treaty of Waitangi as a founding document for the nation and as ensuring the place of the indigenous Maori people within the nation.

6. There had been several notable cases in recent years in which the principles of that Treaty had been invoked. For example, in 1992, after approaches from Maori to the New Zealand Government, a settlement had been reached to fulfil and satisfy Maori claims to commercial fisheries. Her Government was proud of the progress made and had committed itself to resolving all major claims under the Treaty by the end of the decade.

7. Another important aspect of the universality of human rights was the principle of equality between men and women, and women had a particular role to play in the United Nations human rights programme where they could bring an important perspective to bear in responding to human rights violations. The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women, which bore special responsibility for promoting the advancement of the status of women and their equal enjoyment of human rights, had played an important role in all parts of the world. However, it was also important that the Commission on Human Rights should meet its

responsibility of implementing the principle of gender equality. The United Nations system itself should reflect the principle of gender equality in its own composition, and her delegation had consistently fought for the implementation of measures to ensure the participation of women in all facets of the system.

8. The contribution that women could make should be a consideration in the appointment of special rapporteurs, experts and members of working groups, particularly when the subject-matter had a gender-specific impact. It was equally important that the information upon which the thematic rapporteurs and working groups based their conclusions and recommendations be presented in a way that enabled any gender-specific impact to be easily discerned. Unfortunately, the most vulnerable groups, including women and children, were often the ones most immediately and seriously affected by deteriorating human rights situations. Further discussion in the Commission on ways in which women's experience of human rights violations could contribute to the more effective functioning of the thematic mechanisms would thus be useful.

9. At the operational level, her delegation supported the ongoing initiatives in the Commission and elsewhere to integrate the human rights of women into the main stream of United Nations human rights mechanisms. If the functioning of the Commission's thematic mechanisms was to be improved, careful consideration must be given to how they analysed and responded to the information they received on the impact of specific human rights violations.

10. Her delegation thus fully supported the proposals to seek from Governments and from non-governmental organizations gender-disaggregated data. It had supported the recent INSTRAW seminar in the South Pacific to train government officials and NGOs in the appropriate techniques. The move by the Centre for Human Rights to use such data in preparing documents for the World Conference on Human Rights was a welcome one.

11. The 1990s would be a critical decade in the development of the credibility of the United Nations, which was being increasingly asked to respond to urgent and complex political situations, the former Yugoslavia being an all too obvious example. New Zealand's membership of the Security Council had provided her Government with the opportunity to see such situations in all their dimensions and to work for comprehensive solutions. The United Nations would be judged by how well it responded to such crises.

12. The 1993 World Conference on Human Rights would be a landmark event. The women of New Zealand had a special focus for their preparations, namely, a year-long celebration of the women's suffrage won in 1893. In the course of the year, all New Zealanders would be able to assess the current position of women in their society and to consider what had still to be done to achieve true equality.

13. At the international level, her delegation was particularly interested in the preparation of a declaration on violence against women in the Commission on the Status of Women. In that context, new legislation on censorship and pornography had been introduced in New Zealand in December 1992, reflecting a shift in community attitudes from moral repugnance to a focus on the actual and potential harm done by hard-core pornographic material. In addition, her

Government had decided to make the possession of violent and sexually indecent material illegal, thus placing responsibility for the first time on the purchaser.

14. Violence against women unfortunately increased in frequency and severity in times of armed conflict. The recent tragic events in the former Yugoslavia had shown the particular vulnerability of women and girls. The appalling pattern of sexual abuse there had been highlighted in the recent report by the Special Rapporteur, whose pragmatic recommendations on the treatment and rehabilitation of those who had suffered physical and mental injury as a result of rape were most welcome. His well-thought-out comments on the need, to avoid further stigmatization of the victims of sexual violence would be of particular assistance to the international community in formulating its response. Most importantly, however, preventive steps must be taken, as well as effective action when it was known that such abuse was happening. In any case, the Commission had a central role to play in guiding the international community's reaction.

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

(a) TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(b) STATUS OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT;

(c) QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES;

(d) QUESTION OF A DRAFT OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (agenda item 10) (continued) (E/CN.4/1993/4, 20, 21*, 22, 23 and Add.1-2, 24, 25 and Add.1, 26-28 and 86; E/CN.4/1993/NGO/7, 9, 10, 18-20 and 22; E/CN.4/1992/17 and Add.1, 18 and Add.1, and 20; E/CN.4/Sub.2/1992/9 and Add.1, 17, 19, 22, 23/Rev.1 and 24 and Add.1-3; A/47/662; A/RES/47/109)

15. Mr. SORIANO (Observer for the Philippines) said that the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1993/25 and Add.1) dwelt at some length on allegations by non-governmental organizations regarding his country but that a careful reading revealed that most of the cases concerned the implementation of existing legislation. Measures to strengthen the judicial system, had already been adopted by his Government. One of the last acts promulgated by the outgoing administration, on the rights of arrested persons, was mentioned in the report.

16. The new Philippine administration had accorded top priority to peace and security and had immediately enacted three significant measures: an amnesty for some 4,500 former rebels; the establishment of a national unification commission, which was holding extensive consultations with all opposition groups; and the repeal of the Anti-Subversion Act, which had outlawed the Communist Party.

17. As a member of the Philippine Commission on Human Rights (PCHR), he took strong exception to the allegation in the report that the Philippine

Commission on Human Rights "had not gained the confidence of the victims of human rights violations nor had it successfully prosecuted many of the violators" (para. 429). The Report itself showed that cases submitted by the Working Group had been conscientiously investigated and reported on by the PCHR. Social surveys adopted in the Philippines indicated increasing satisfaction with the Government's performance in the promotion of human rights and revealed the people's perception of their responsibility in the promotion and protection of their rights.

18. The PCHR offered legal services covering the conduct of hearings, representations for the resolution of complaints, and monitoring of the status of cases filed with courts and agencies. Further proof of the increased confidence in the Commission was the close collaboration between the PCHR and the Families of Involuntary Disappeared Persons (FIND), a non-governmental organization.

19. The PCHR believed that the solution to cases of disappearances and other human rights violations lay not in dismantling the country's security institutions but rather in eliminating abuse and undesirable elements within those institutions. The Government had also recognized that point and was taking steps to weed out perpetrators of abuse among the security forces. In that connection, many of the "tentative considerations" of the Working Group on the question of impunity were already to be found in Philippine legislation. Protection of witnesses and assistance to victims were also among the steps taken by the Government.

20. The Government had also acted to ensure the proper functioning of the administration of justice and to strengthen the judiciary. In collaboration with relevant Government agencies, the Philippine Commission had worked out legislative proposals and administrative measures concerning social justice and a human rights code, which would consolidate all the relevant human rights laws, including constitutional guarantees and statutory rights.

21. The PCHR had, during its first year of operation, focused its informational and educational campaign on the military and police sectors. The campaign had then been widened to include government officials and employees, teachers, non-governmental organizations, paramilitary groups, etc.

22. Terrorist acts in the form of intimidation to gain material support were committed by groups which remained outside the reach of the law. However, the legalization of the Communist Party not only gave its members an opportunity to become a legal and responsible segment of society but also removed the "red-labelling" excuse for human rights violations.

23. The real enemy facing Filipinos was poverty, in which many human rights violations were rooted. The Government was pursuing a poverty alleviation programme and those who considered themselves the moral vanguards of society should concentrate on a much-needed moral rehabilitation of the people and cooperation to achieve social and economic development.

24. Mr. PORTALES (Chile) said that the right to freedom of information and expression was one of the most decisive factors determining the enjoyment of human rights and fundamental freedoms. In a society in which that right was

not respected, the authorities could commit arbitrary acts of all kinds, leaving the population with a feeling of absolute impotence since it had no possibility of protesting. An obvious instance was the case where all information media owned by the State, either directly or through institutions it controlled. Another was the case where large economic groups monopolized the information media.

25. In addition, many societies penalized the expression of opposition to the established powers by means of what was characterized by the special rapporteurs as offences of opinion, such as hostile propaganda, incitement to commit misdeeds, slander and agitation. States of emergency were also frequently used as a means of violating those rights.

26. The extreme importance of the exercise of the right to freedom of information and expression and its serious violations in many countries made it necessary to strengthen the international system for its protection. In that connection, there was urgent need for the Commission to consider the appointment of a special rapporteur on freedom of information and expression and also the possibility of preparing a convention on the subject.

27. With regard to the work of the Working Group on Arbitrary Detention (E/CN.4/1993/24), he noted that, guided by the principles of non-selectivity, impartiality and objectivity and by a refusal to use its mandate for political ends, the Group had received and examined all the cases submitted to it; that it regretted that it could pronounce only on cases where it had received information, and that it requested non-governmental organizations to provide information on a greater number of countries.

28. His delegation supported that request but it also considered that the Working Group's activities could be improved if the Commission authorized it to examine cases where information was received from sources other than those enumerated in its mandate.

29. The Working Group's report regretted the abuse of states of emergency by many Governments. The updated report of the Special Rapporteur on the question of human rights and states of emergency (E/CN.4/Sub.2/1992/23/Rev.1) noted a reduction in the number of countries that were misusing states of emergency but the practice continued to be a source of concern. There was also the misuse of criminal charges for prosecution purposes merely using such terms as "treason", "State security offences" and "terrorism", which were not properly defined, did not meet the requirements of proper characterization of offences and were inexhaustible sources of arbitrary action.

30. It was clear that national and international machinery for the protection of human rights required an improved definition of the powers of States to punish offences committed for political purposes, in order to prevent restrictions on the effective exercise of civil and political rights.

31. In conclusion, his delegation supported the resolution adopted by the Working Group on the arbitrary detention of Daw Aung San Suu Kyi, the Nobel Peace Prize winner, and endorsed the call by the international community for her immediate and unconditional release.

32. Mr. HEREDIA (United Nations Centre for Social Development and Humanitarian Affairs) said that the cooperation between his Centre and the Centre for Human Rights would be further strengthened in the near future, with a view to exploring ways and means of joint action in the field of the administration of justice, with special emphasis on the effective implementation of United Nations standards and norms.

33. The Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, which the General Assembly had requested should be upgraded to a division, was trying to maximize the results of the programme despite its limited resources. To render the work as effective as possible, liaison officers had been established in both Centres to monitor the human rights aspects of the administration of justice in the various elements of United Nations programmes. Due to the complexity of the issues involved, consultations and resources were required to strengthen technical cooperation between the Branch and the Centre for Human Rights in terms of the programme of advisory services in the field of human rights.

34. Cooperation might also include developing criminal justice training materials, strengthening legal aid services, establishing training workshops for the Judiciary, and organizing national and regional seminars. The Branch was currently working on a request from the Russian Government for technical assistance in connection with judicial reform. At the same time, the programme of advisory services of the Centre for Human Rights was considering a project on legislation, training and information.

35. Improved cooperation also seemed to be needed in Cambodia, where the Chief of the Branch had been seconded to head the civilian administration of Phnom Penh. A new draft penal code had been formulated and another member of the Branch and two consultants were providing professional expertise on the proposed legal, public service and justice reforms, with particular emphasis on the development of a code of conduct for public officials.

36. His unit much appreciated Sub-Commission resolution 1992/38 on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers. It was especially pleased with the suggestions for improving the coordination and distribution of the work of the two programmes.

37. With regard to the Commission on Crime Prevention and Criminal Justice, he recalled the emphasis placed by the Economic and Social Council on the importance of human rights in the daily administration of crime prevention and criminal justice. The Commission's programme was directed in the first instance towards operational activities and technical assistance to developing countries and the following priority themes had been adopted to guide it in its work: national and transnational crime, organized crime, economic crime, including money laundering, and the role of criminal law in the protection of the environment; crime prevention in urban areas, juvenile and violent criminality; and efficiency, fairness and improvement in the management and administration of criminal justice and related systems.

38. At its second session, the Commission would be faced with the following tasks: review of priority themes, technical cooperation; coordination of activities with other United Nations bodies; United Nations standards and

norms in the field of crime prevention and criminal justice; and preparations for the Ninth Crime Congress on the Prevention of Crime and the Treatment of Offenders.

39. The predominant function of the quinquennial congresses should be to serve as worldwide forums, affording a major opportunity for the exchange of information expertise and experience. The contributions of non-governmental organizations should be fully integrated into the Congress programme.

40. On the recommendation of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council, in its resolution 1992/24, had decided that the following topics could be included in its provisional agenda: international cooperation and practical technical assistance for strengthening the rule of law; action against national and transnational economic, organized and environmental crime; criminal justice systems: management and improvement of police, prosecution, courts and corrections; and crime prevention strategies, particularly as related to crimes in urban areas and juvenile and violent criminality, including the question of victims.

41. The World Conference on Human Rights, would provide an opportunity of emphasizing the need to protect human rights in all facets of criminal justice practice. Within that framework, the implementation of United Nations standards and the model treaties related to efforts to combat criminality more effectively, to make criminal justice more efficient and humane, and to promote and encourage respect for human rights and fundamental freedoms. In view of the requirements of Member States to apply many of the existing standards effectively, the World Conference might be invited to give due priority to those combined criminal justice and human rights issues.

42. In conclusion, he congratulated the Centre for Human Rights on its excellent preparatory work for the World Conference and, in particular Mr. Pace on his valuable and effective role as Coordinator.

43. Mr. BOUCHET (France) said that impunity had always been a source of concern for those responsible for securing effective respect for human rights. The persistence of particularly serious violations such as those taking place in the former Yugoslavia gave the subject a tragic topicality requiring an urgent response. In that connection, the French Commission on Human Rights had organized, together with the International Commission of Jurists and under the auspices of the United Nations, some international meetings on impunity from 2 to 5 November 1992. The meetings had been attended by some 60 experts from all over the world, representatives of some 30 major non-governmental organizations (NGOs) and 20 permanent missions of Member States. The original method used had made possible a constant interplay between legal data and on-the-spot reality as recalled by witnesses and victims.

44. The first objective had been to denounce the impunity enjoyed by criminals guilty of the most serious crimes. Such a denunciation needed to be renewed constantly, since it played a deterrent as well as a moral role. However, it was clear that denunciation was not enough and that efforts must be made to put an end to impunity. In that respect, three kinds of constraint - ethical, legal and political - had to be recognized. The requirement of truth, to prevent violations from being forgotten, was a

necessary, if not sufficient, condition for justice, and no limitation should be placed on it, either temporal or spatial. It was therefore a matter of priority to collect evidence, to enable the non-governmental organizations and the media to break the law of silence, and to speed up inquiries to establish the facts. Even if, in some situations, the victims themselves appeared to favour oblivion in order not to have to recall their terrible experiences, the truth must be established against those who wished to abolish the memory of what had happened, or to make it selective, with a view to subsequently "revising" history and then "denying" the clearest violations.

45. However, the duty to provide justice to victims was not satisfied by the establishment of the truth alone, since legal constraints arose. For justice to be done, offences must be clearly defined as such, penalties firmly identified, and a fair trial before an impartial and independent court guaranteed.

46. The political constraints were both domestic and international. At the domestic level, the possibility of handing down a fair judgement required that a State subject to the rule of law had either been established or restored. The situation was clear-cut when a dictatorship collapsed and gave way to a democratic regime but many countries were experiencing intermediate situations in which the return to democracy was fragile and unstable. Priority was thus given to the establishment of civil peace, even at the cost of compromising with the supporters of the previous regime. Even in such exceptional circumstances, however, the limitations on punishment which could be allowed in order to promote the transition towards democracy must be subordinated to respect for two conditions: decisions to grant an amnesty must not be taken by the perpetrators of the violations themselves or their accomplices; and, such decisions must not violate the right of victims and their relatives to know and to make known what had happened, to be fairly compensated and, where appropriate, to be fully rehabilitated.

47. There were also constraints at the international level, since no international jurisdiction had yet been established. The technical obstacles could easily be overcome if there was an appropriate political will. The rules of international law could still be improved or supplemented but they were already sufficient to initiate immediate proceedings against the perpetrators of the most serious violations of human rights if they were not punished by domestic law. The forthcoming decision of the Security Council to establish an ad hoc international tribunal to judge crimes committed in the former Yugoslavia would constitute a manifestation of such political will and would make it possible to proceed further along the road to the international suppression of crimes that had thus far gone unpunished. In any case, the campaign against impunity must be given priority in the fight for human rights if those rights were not to lose their credibility.

48. Ms. PEREZ (Brazil) said that protection of the rights covered by agenda item 10 was one of the Commission's main responsibilities, for without them all other rights lost their meaning. Freedom of opinion and expression should be added to the other fundamental human rights, because it constituted the essential condition for a truly democratic and participative society. No excuse for denying the basic rights in question could be accepted.

49. However, adequate knowledge and understanding of the concrete historical, political and socio-economic circumstances prevailing in countries where grave violations occurred was of great importance for the Commission's work, in terms of finding the most suitable and effective measures to protect human rights in all contexts and providing countries with the necessary international cooperation. In that connection, Commission resolution 1992/51 on the strengthening of the rule of law, and the draft resolution on the administration of justice and human rights to be submitted under agenda item 10 were both relevant contributions to reinforcing the capacity of the developing countries to respect human rights standards despite serious socio-economic constraints.

50. The international human rights monitoring mechanisms could not be neglected either. Her delegation had thus supported the initiative to finance the Committee against Torture from the United Nations regular budget. Torture was one of the most abhorrent violations of human rights and every effort must be made to eradicate it. She highly commended the report of the Special Rapporteur on questions relevant to torture (E/CN.4/1993/26) and believed that his mandate should be continued until torture no longer existed. Her delegation had been a sponsor of Commission resolution 1992/43 and was an active member of the Working Group preparing an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

51. Her delegation also attached great importance to the Working Group on Enforced or Involuntary Disappearances and welcomed the adoption by the General Assembly at its forty-ninth session of the Declaration on the Protection of All Persons from Enforced Disappearance. Her Government's positive contribution to solving cases that had occurred in its territory were reflected in the Working Group's report (E/CN.4/1993/25). Furthermore, it had invited the Working Group to visit Brazil in 1993 and to verify the progress recently made, which included the opening of the police files compiled under the military regime.

52. In response to the statement by the representative of the World Organization against Torture, she explained that the police had entered Carandiru prison as a result of a fight amongst prisoners that could have turned into a riot. The excessive violence of the police action had had tragic consequences, which her Government was not trying to minimize. The Carandiru tragedy had shocked the Brazilian authorities and public opinion, and everything was being done to investigate it and to punish those responsible.

53. Mr. PALACIOS (Observer for Spain) said that torture was the absolute negation of human dignity. Nevertheless, despite the existence of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its follow-up machinery, torture continued to be universal. Spain was a party to the European Convention against Torture, which allowed individual complaints of the practice, and had recognized the competence of the United Nations Committee against Torture to receive and consider communications from individuals.

54. It was important that all States should assume their share of responsibility in the effort to eradicate torture by investigating every sign of it, reporting and punishing those guilty of it, educating and controlling those sectors of society most likely to use violence in the exercise of their functions, and helping and compensating victims of torture, even if that meant only giving them the satisfaction of seeing that justice had been done. In a democratic society, the judiciary was the ultimate bastion for the effective protection of human rights and for the prevention of torture, and only through its independence could respect for the rights of individuals and the guarantee of a fair trial be secured.

55. During the debate on agenda item 10, representatives of two non-governmental organizations had mentioned Spain. In the first case, the reference had been to the prolonged hunger strikes by certain prisoners and to frequent maltreatment of prisoners. It should be pointed out, in that connection, that the case in question had been the subject of a complaint against Spain, made through mechanisms which Spain had freely accepted, and that the Spanish authorities, after an extensive investigation, had submitted such a complete reply that the competent body had decided to proceed no further.

56. The second case mentioned was totally unsuited to a debate in the Commission. It was sub judice, and the trial was being extensively followed by all the Spanish media. Television cameras had even been introduced into the courtroom, so it would be difficult to hide the truth.

57. In dealing with those two examples, his Government did not wish to escape its responsibilities. Everyone had to be vigilant in the campaign against torture but a key distinction had to be made between the systematic practice of torture and isolated individual cases, with due regard for the mechanisms available to society and the State to eliminate them and punish the guilty parties.

58. Mrs. KIPP (Observer for Sweden) said her delegation welcomed the informative reports submitted to the Commission by the Working Group on Enforced or Involuntary Disappearances, the Working Group on Arbitrary Detention, and the Special Rapporteur on questions relevant to torture. It attached great importance to those thematic mechanisms and firmly believed that sufficient resources must be allocated to maintain and enhance them.

59. The Working Group on Enforced or Involuntary Disappearances had communicated with Governments on concrete cases of disappearances and had continued its conceptual approach on ways of combating that abhorrent practice, concentrating on the problem of impunity. It had managed to reduce its backlog from 12,000 to 8,000 reports and should be given sufficient resources to eliminate the backlog completely and to continue its follow-up of processed but unresolved cases.

60. Fortunately, the number of new cases reported in 1992 had dwindled to 353 worldwide, excluding the situation in the former Yugoslavia. Given the resources, the Working Group should be able to continue its follow-up while

further developing its dialogue with Governments and non-governmental organizations on the issue of impunity and on the need for effective habeas corpus legislation.

61. The adoption, by the General Assembly, of the Declaration on the Protection of All Persons from Enforced Disappearance was a most welcome development. The Declaration had, however, to be implemented at the national level. Her Government shared the Working Group's view that a separate chapter on the obstacles encountered in the implementation of the Declaration should be included in its future reports (E/CN.4/1993/25, para. 520). It was particularly concerned that relatives who reported disappearances were being persecuted and that witnesses were sometimes prevented from having access to representatives of human rights bodies making country visits. It was also a matter of serious concern that, to date, 10 Governments had never provided any replies to the Working Group regarding specific cases of disappearance.

62. Her delegation noted with satisfaction the atmosphere of openness and transparency which had prevailed during the Working Group's second visit to Sri Lanka (E/CN.4/1993/25/Add.1), where it had appreciated the responsiveness of the Government to its suggestions. It was also encouraging that the number of new disappearances in that country continued to decrease. Certain problems persisted, however, particularly with regard to the follow-up of disappearances that had occurred in 1989 and 1990, the absence of vigorous prosecution in notorious cases of disappearance, and the delay in reviewing the emergency regulations currently in force. With respect to the last of those problems, however, she understood that the Government of Sri Lanka had undertaken further action in pursuance of the Working Group's recommendations.

63. Her Government was alarmed at the thousands of reports of disappearances in the former Yugoslavia. Legal quibbles as to whether a conflict were international or internal must not stop the international community from taking urgent and effective action. In view of the scope and complexity of the situation, a specific mechanism, involving the Special Rapporteur, the International Committee of the Red Cross and the Working Group itself, must be devised to tackle the question of the disappearances in that area.

64. According to its report (E/CN.4/1993/24), the Working Group on Arbitrary Detention had transmitted 34 communications containing newly reported cases of alleged arbitrary detention to the Governments concerned. Given the non-judgemental approach of the Working Group and the fact that it acted only on cases of which it had been notified, it was regrettable that only half of the Governments approached had replied to the Group.

65. Torture, a particularly heinous crime, seemed to be spreading and the weakest segments of the population were increasingly the victims. Her Government was alarmed at the number of cases of torture of children and the use of rape as a method of warfare against a different ethnic group.

66. It was an insult to the Commission that, in 1992, only 27 Governments out of the 55 approached by the Special Rapporteur on questions relevant to torture had replied to his letters and that several others had provided replies that were clearly unsatisfactory. Flat denials had been issued without any evidence that the allegations had been investigated. The fight

against torture must be relentlessly pursued by international human rights bodies and all Governments and her delegation endorsed the recommendations in the Special Rapporteur's report (E/CN.4/1993/26).

67. Her Government had taken note of the report (E/CN.4/1993/28) presented by the Working Group on the draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and thought that the Working Group's mandate should be renewed.

68. United Nations human rights bodies should give priority to the fate of the victims of serious human rights violations and to compensating them or their close relatives. Her Government, which attached great importance to the United Nations Voluntary Fund for Victims of Torture, had contributed to it since 1981 and would increase its contribution considerably in 1994. It urged all other Governments to do likewise.

69. Mr. BRODY (International Human Rights Law Group) said that one of the most important challenges addressed by the report of the Working Group on Arbitrary Detention (E/CN.4/1993/24) was the Group's ability to decide not only on cases of pre-trial detention but also on cases of persons deprived of their liberty after a conviction. It was clear that a person detained under national legislation that violated international standards might have his or her case considered by the Working Group, and it would be illogical to prevent scrutiny of the case merely because that national legislation had been applied by a court of law.

70. Since its inception two years previously, the Working Group had received a relatively small number of cases. Unfortunately, little had been done to create an awareness of the Working Group's existence, and that had led to its underutilization. Moreover, two recent decisions by the Group made it less likely that prisoners and human rights groups would resort to it to challenge arbitrary detention.

71. In the first place, it had decided not to publish its decisions or to reveal their contents before publication of its annual report to the Commission. Since the Working Group's findings relied either on voluntary compliance by the State concerned or on the adverse publicity resulting from the finding, that meant that a detainee might languish in prison for some two years before advocates had a decision of the Working Group to use on his or her behalf. It was gratifying, therefore, that the Chairman of the Working Group had stated that the Group might reconsider its policy in that regard.

72. Secondly, the Working Group unfortunately maintained its position that, when a person had been released, for whatever reason, since the Working Group had taken up the case, the case was filed (E/CN.4/1993/24, annex IV, para. 14 (a)). Although, in response to criticism from non-governmental organizations, the Group had reserved "the right to decide, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary", that had been done in only 9 out of 116 cases of released detainees and the Chairman of the Working Group had made it clear that such a procedure would be adopted in exceptional cases only.

73. That approach might immunize individual cases and even practices of short-term arbitrary detention from scrutiny and created a disincentive to the detainee to bring his or her case before the United Nations unless the detention was likely to last more than the nine months that it would take the Working Group to reach a decision.

74. Mr. MORKA (International Human Rights Law Group) said that, in Nigeria, the Government had renewed its crackdown on human rights and pro-democracy advocates in the wake of its announcement of a third postponement of the transfer of power to a civilian Government. It had announced on 8 December 1992 that all human rights groups and pro-democracy activities would be placed under police surveillance, but there had previously been numerous acts of police harassment of human rights organizations and activists, including raids on premises, seizures of passports and documents, dispersal of seminars, vigils and demonstrations, and arrests of printers and leading pro-democracy personalities.

75. The latest crackdown on human rights and pro-democracy advocates was not without precedent. In May 1992, four leading human rights activists had been arrested and charged with treason for expressing and publishing critical views. They had been detained incommunicado for more than a month before being released on bail. Their trial was pending.

76. Ms. BECK-HENRY (World Movement of Mothers) said she deplored the numerous cases of forced or involuntary disappearances, arbitrary detention, torture and cruel, inhuman or degrading treatment reported in many countries. Hatred and a thirst for vengeance too often replaced the rule of law in countries where human rights were still disregarded. It was to be hoped that States would increasingly comply with international norms.

77. Even if certain causes had to be defended, it was not an act of cowardice to renounce acts of violence, given the misery and sorrow that inevitably resulted. The mothers of the world did not want to see their children drawn or forced into futile but barbarous undertakings, often to perish. They had had enough of the rivalries between political leaders that were poisoning the planet. It was time to put an end to senseless combat. Differences must be resolved by peaceful and democratic means.

78. Ms. RISHMAWI (International Commission of Jurists (ICJ)) said she wished to alert the Commission to the situation in Sri Lanka. There was, for example, the case of the well-known journalist Richard de Zoysa, who in 1990 had been abducted from his home and had subsequently been found dead. An ICJ observer had attended the magistrate's inquiry and ICJ had subsequently recommended the appointment of an independent commission of inquiry into his death. The Working Group on Enforced or Involuntary Disappearances had expressed dissatisfaction with the follow-up to that case. Another example was the detention and subsequent disappearance, in Embilipitiya, of 31 school pupils in 1989 and 1990. The Human Rights Task Force set up to investigate such matters had not even questioned the school principal or the seven members of the army, including one high-ranking officer, alleged to be responsible.

79. ICJ had welcomed the establishment of a Presidential Commission on the Involuntary Removal of Persons in January 1991, but that Commission's mandate

was limited to persons who had disappeared after 11 January 1991, although at least 13,000 cases had been recorded before 1991. There was no mechanism in Sri Lanka to clarify any of those cases. During the two years of its operation, the Commission had finalized only six cases and had investigated only one police officer, the conclusion in that case being that there was insufficient evidence to prosecute.

80. ICJ called upon the Government of Sri Lanka to clarify the fate of the disappeared persons and to bring the perpetrators of those crimes to justice.

81. Since the establishment of the Working Group on Arbitrary Detention, ICJ had brought a number of cases to its attention, including that of a man arrested in Jordan and handed over to the Saudi Arabian authorities, several cases of administrative detention by Israel without charge or trial of Palestinians from the occupied territories and the cases of pro-democracy leaders in Myanmar. In each of those cases, the Working Group had found that the persons concerned were arbitrarily detained.

82. ICJ concurred with the Working Group's "deliberations" establishing guidelines on questions of legal principles, and agreed that house arrest and the like constituted arbitrary detention. It supported the view that the legal principles on fair trial must be regarded as constituting customary international law binding on every State, whether or not it was a party to a particular Convention, and that neither the intervention of a judge nor the fact that detention was carried according to local law was sufficient to render the detention legal.

83. If individuals were to be protected against such crimes as disappearances and arbitrary detention, the independence of the judiciary and legal profession was crucial. As illustrated by the annual report of ICJ's Centre for the Independence of Judges and Lawyers (CIJL), entitled Attacks on Justice, there was still need for United Nations involvement in protecting jurists. The report of the Sub-Commission's Special Rapporteur (E/CN.4/Sub.2/1992/25 and Add.1) showed that, in too many countries, violence against judges and lawyers was increasing and that 447 jurists in 46 countries had suffered reprisals for carrying out their professional functions; including 35 who had been killed, 2 who had disappeared and 17 who had been assaulted.

84. For the working groups and special rapporteurs to function effectively, the Centre for Human Rights must have adequate resources, and it was to be hoped that the Commission would devote adequate attention to that serious matter.

85. Mr. WAREHAM (International Association against Torture) said that the problem facing the United Nations was not a lack of instruments but ineffective implementation. The Organization would not achieve real international credibility until a single standard of enforcement was exercised. Currently there were numerous examples of double standards such as situations in Chile, El Salvador and Colombia, but the permanent Members of the Security Council were not prepared to ensure respect for human rights in those countries because serious violations went unaddressed in their own

countries as well. The powerful States of the "developed world" escaped censure because they had conveniently redefined and/or legalized their human rights abuses.

86. For example, the United States denied the existence of its more than 200 African-American, Puerto Rican, Chicano, native American and white political prisoners, maintaining that they were not revolutionaries or activists but "terrorists" and criminals. However, the character of the surveillance to which they were subject, the manner of their arrests, the nature of their trials, the length of sentences received upon conviction and their treatment in prison all indicated political motives. He mentioned, in that connection, the cases of three former members of the Black Panther Party and one member of the Black Men's Movement Against Crack.

87. Those cases were representative of many. According to United States official statistics, people of African descent - 12 per cent of the total population - accounted for 47 per cent of the prison population. Of the 2,482 persons sentenced to death in 1991, almost 40 per cent were black. A 1992 study of the United States policy of the detention and imprisonment of black males, had concluded that, if current patterns continued, 40 per cent of all African-American men aged 18 to 35 would be in prison by the year 2000. In the last 12 months, 23 young black men had been found hanged, supposedly suicides, in Mississippi jails alone.

88. American society was so imbued with racism that black male involvement with the criminal justice system was almost inevitable. An unemployed young African-American man convicted of a drug offence was almost six times as likely to be imprisoned as a white man convicted of a similar offence. The 1992 trial of the Los Angeles police officers charged with the assault of Rodney King had shown how far the criminal justice system was prepared to go to avoid punishing law enforcement officers for racist behaviour.

89. By statistical manipulation, half truths and outright deception, the United States had been able to escape international censure, thereby reinforcing the double standard that encouraged other countries to continue their violations. The United States, should therefore come under the scrutiny of the Special Rapporteur on questions relevant to torture and the Working Group on Arbitrary Detention.

90. His organization would also like to see greater United Nations involvement and intervention in the situations in El Salvador, which should continue to be considered under agenda item 12; Chile, where mistreatment of political prisoners should be ended immediately, and Colombia, which had one of the worst records in the world for human rights violations.

91. Mr. HERRERA (World Christian Life Community) said that human rights defenders in Latin America were in constant danger, largely as a result of media manipulation of public opinion aimed at portraying the activities of human rights organizations as illegal attempts to sabotage the armed forces. In Colombia, for example, even small groups seeking to defend the basic human rights of local communities faced harassment and repression. He himself had been shot, at point-blank range, by a police special operations unit, resulting in the loss of two thirds of his right lung, while other members of

his community, who had merely tried to defend their basic human rights, had been arrested on charges of terrorism and conspiracy, an action justified by a leading Colombian newspaper as a measure to combat kidnapping and terrorism.

92. Although Colombia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, human rights violations continued to be perpetrated by military and paramilitary groups and by drug traffickers. A recent report by the United States State Department had spoken of complicity and corruption among police and army officers in rural areas, the widespread practice of murdering those considered to be socially undesirable - such as street children, beggars, prostitutes or homosexuals - and violence directed against human rights organizations by right-wing paramilitary groups, the police and the army. In the light of the deteriorating human rights situation, a special rapporteur on the situation of human rights in Colombia should be appointed and Colombia should be considered by the Commission under agenda item 12 at its fiftieth session.

93. Ms. MENDIZABAL (Women's International League for Peace and Freedom) said that she wished to draw attention to three specific cases of degrading and inhuman treatment. Silvia Beraldini, an Italian woman, had been arrested in the United States of America in 1982 and subsequently transferred to a high-security facility. The prison authorities having failed to provide proper medical treatment, she had been diagnosed as having advanced cancer. Continuing refusal to allow the necessary medical treatment meant that her life was in danger. Despite representations by the Italian Government, her application for repatriation had been turned down, apparently for purely vindictive reasons.

94. The second case was that of Li In Mo, a former war correspondence with the Korean People's Army, who had been captured by the South Koreans in 1950 and imprisoned for a total of 34 years, before his release in 1988, still suffering from the effects of torture. His request for repatriation to the People's Republic of Korea, where his wife was living, had been refused by the South Korean authorities. He had taken his case to several international organizations, including the International Committee of the Red Cross, but to no avail.

95. The third case concerned the Sri Lankan woman writer, Selvy Thiagarajah, who had been detained in August 1991 by the Liberation Tigers of Tamil Ealam (LTTE) and whose whereabouts were unknown. The case epitomized the violation of the basic right to freedom of speech and was part of a growing trend in that country. Physical attacks on media personnel were widespread and newspapers had suffered harassment and intimidation. The report of the Working Group on Enforced or Involuntary Disappearances on its unprecedented second visit to Sri Lanka (E/CN.4/1993/25/Add.1) had expressed regret at the failure of the Government of Sri Lanka to implement the recommendations of its first report and condemned the country's record on disappearances as the worst it had ever encountered.

96. Her organization urged the Government of Sri Lanka and LTTE to respect the right of freedom of opinion and expression in the areas under their respective control. It appealed to the Commission to take action on the

three cases she had mentioned and to continue monitoring the human rights situation in Sri Lanka, with the emphasis on ensuring implementation of the Working Group's recommendations.

97. Mr. Ennaceur took the Chair.

98. Ms. ASSAAD (International PEN) said that, while her organization welcomed the repeal by the Turkish Government of certain articles of the Criminal Code which had permitted the detention of many writers and journalists, it was concerned that the Anti-Terrorism Act, introduced in April 1991 to replace those provisions, provided a wide interpretation of the term "terrorism" and allowed the prosecution of journalists and writers for publishing articles deemed to support terrorism.

99. It appeared that the Act was being used to censor discussion on sensitive topics, particularly Kurdish issues, and that many writers and journalists had been arrested and detained under it, often for short periods as a form of harassment designed to induce self-censorship. In the period up to February 1993, 13 journalists, publishers and writers had received prison sentences of up to two and a half years, in many cases accompanied by heavy fines.

100. In the south-eastern part of the country, where a state of emergency was in operation, detainees could be held for up to 30 days before being brought before a judge. Such extended periods of police detention increased the risk of ill-treatment of prisoners and numerous allegations had been made concerning the use of torture to extract confessions. The criminal libel laws were also being used to censor criticism of the authorities and at least three journalists had received prison sentences for allegedly insulting the President or the judiciary.

101. International PEN's main concern, however, was the alarming increase in killings of writers and journalists which constituted a sinister attack on freedom of expression. The results of the investigations undertaken by the Turkish authorities should be made public and those found responsible brought to justice so as to guarantee the future safety of writers and journalists working in Turkey.

102. For its part, the Commission should take steps to end the imprisonment of writers and journalists in Turkey solely for exercising their right to freedom of expression and should urge the Turkish authorities to prosecute those responsible for attacking or murdering writers or journalists, whether Government officials or private individuals.

103. Ms. WILLIAMS-DAWODY (Nigeria) speaking in exercise of the right of reply, said that her Government acknowledged the right of all citizens to freedom of expression and opinion and had, in the past, accommodated dissent and criticism by individuals and groups, through both the media and public demonstrations. However, a distinction had to be drawn between dissent or criticism on the one hand, and crime and the instigation of violence on the other. The remarks made by the President of her country, allegedly threatening repressive measures against human rights and pro-democracy

advocates, had been taken out of context. What the President had said was that the Government would not stand by and allow trouble-makers to disrupt the transition to a democratically elected Government.

104. The so-called human rights and pro-democracy groups were pressing the Government to hand over power to an unelected national conference, made up of their own members, while the Government's position was that free and fair elections must be held for all offices. Democratically elected governments were already in place at the local and state levels and, at the federal level, the National Assembly had been elected and inaugurated in December 1992.

105. Unfortunately, the primary elections for the presidency had had to be cancelled because of corruption and irregularities, with the result that the date for the final transition to democratic rule had had to be postponed. That had prompted the so-called pro-democracy groups to threaten to cause civil disorder and promote insurrection if the Government failed to hand over power to them by 2 January 1993.

106. It was against that background that the President had made his statement. The Government of Nigeria had a duty to protect its people from the forces of anarchy. Fortunately, the people of Nigeria had not heeded the call to insurrection and had continued to support the Government's efforts to return the nation to full democratic rule, a transition which should be achieved by August 1993. All groups which genuinely supported the return to democracy should therefore cooperate with the Government to ensure the success of its programme, rather than seek political influence through protest and violence.

The meeting rose at 6.05 p.m.